IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Rashid Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.596/2003)

D. B. Criminal Appeal under Sec.374(2) Cr.P.C. against the judgment dated 12-11-2002 in Sessions Case No.195/2002 passed by Sh. Hari Ram Meena, RHJS, Additional Sessions Judge (Fast Track) Kaman District Bharatpur.

Date of Judgment: March 15, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Dr. Bharti Sharma, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Rashid, the appellant herein, was indicted before the learned Additional Sessions Judge (Fast Track) Kaman District Bharatpur in Sessions Case No.195/2002. Learned Judge vide Judgment dated November 12, 2002 convicted and sentenced the appellant as under:-

U/s.302 IPC:
To suffer life imprisonment and fine of Rs.1000/-, in default to further suffer six months simple imprisonment.
U/s.201 IPC:
To suffer imprisonment for three years and fine of Rs.1000/-, in default to further suffer six months simple imprisonment.

Substantive sentences were directed to run concurrently.

2. It is the prosecution case that a written report (Ex.P-4) was lodged on August 5, 2000 at Police Station Pahadi by informant Deenu (Pw.2) with the averments that his son Shahjad, boy of 11 years, who went to his uncle's house on August 1, 2000 was missing. It was also stated that one Kantula intimated him that dead body of Shahjad might be found in the room of his son Rashid (appellant). On that report a case was registered for the offences under sections 302 and 201 IPC and investigation commenced. Statements of witnesses under section 161 CrPC were recorded, dead body of Shahjad got recovered, autopsy on the dead body was performed, necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Kaman District Bharatpur. Charges under sections 302, 201 and 377 IPC were framed. The accused denied the charges and claimed trial. The prosecution in support of its case examined as many as 11 witnesses. In the explanation under section 313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard rival submissions and scrutinised the record.

4. Since there was no eye witness of the occurrence the prosecution based its case on circumstantial evidence. It is well settled that case based on circumstantial evidence must satisfy three tests:-

> (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
> (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

5. Before proceeding further we deem it appropriate to consider as to what circumstantial evidence is? Circumstantial evidence means the evidence afforded not by the direct testimony of an eye witness to fact to be proved, but by the bearing upon that fact or other and subsidiary facts which are relied upon as inconsistent with any result other than truth of the principal facts. Circumstantial evidence is not an evidence direct to the point in issue, e.g. the statement of a person that he saw another give a fatal blow to the deceased, but evidence of various facts other than the fact in issue which are so associated with the fact in issue that taken together they form a chain of circumstances leading to an inference or presumption of the existence of the principal fact. The circumstantial evidence should be like spider's web leaving no exit for the accused to slip away. The various links in the chain, when taken in isolation, might not connect the accused with the commission of the crime but when taken together may unmistakably point out the guilt of the culprit.

6. Bearing these principles in mind we have to adjudge the total cumulative effect of all the proved circumstances, each of which reinforces the conclusion of the guilt of the appellants.

7. Learned trial court placed reliance on the following circumstances in convicting the appellant:-

(i) Death of Shahjad was homicidal in nature.

(ii) Dead body of Shahjad was found in the room where

appellant was residing.

(iii) Appellant did not give explanation as to how dead body was found in his room.

HOMICIDAL DEATH:

8. Death of Shahjad was indisputably homicidal in nature as per post mortem report (Ex.P-11). According to Doctor Amrit Lal Jatav (Pw.9), who was member of the Medical Board, deposed that the cause of death was asphyxia due to throttling of neck.

EXCLUSIVE POSSESSION OF ROOM:

9. Second circumstance on which reliance was placed was that the room from where the dead body got recovered was in the possession of the appellant. The room from where dead body was found was shown in the site plan (Ex.P-1). A look at the site-plan reveals that dead body of Shahjad was found buried in the room shown by mark (A), this room is adjacent to another room marked (B) wherein on the day of incident brothers of appellant were residing. It is borne out from the record that the house in question belonged to Kantula, father of appellant, where whole family of Kantula was residing but the prosecution failed to examine Kantula and his other sons who were in occupation of other room shown in the site plan by mark `B'. It also appears that prior to recovery of dead body the appellant and his wife had already left the house and they were away from the village. Kantula would have been the best witness to establish that the room from where the dead body was recovered, was in the exclusive possession of the appellant. It will be appropriate at this juncture to refer to the following contents of FIR (Ex.P-4):-

"आज दिनांक 5.8.2000 को समय करीब 7.30 ए.एम. बजे कांटूला पुत्र उम्मेद जाति- मेव निवासी- भौंरी ने रहमान की बैठक पर पांच आदमी जिनमें समीखां पूर्व उप प्रधान, मुवीन खां पूर्व पंच, रहमान, नाजर, याकूब वगैरहा मुख्य है। इकट्ठे करके बताया कि मेरे लड़के रसीद ने मेरे घर में से पाँच सौ रूपये निकाल लिये थे इसलिए मैंने रसीद के घर का ताला खोलकर अपने रूपयों की तलाशी करनी चाही तो रसीद के अन्दर मकान में जमीन की मिट्टी खुदी हुई पड़ी मिली है। हो सकता है उसमें दीनू का लड़का दबा हुआ हो।"

A perusal of the above demonstrates that the room had already been unlocked prior to institution of the FIR. Thus it could not be established that the room from where the dead body recovered, was in the exclusive possession of the appellant.

APPELLANT FAILED TO GIVE EXPLANATION:

10. The third circumstance relied on was that the appellant had failed to give explanation as to under what circumstances the dead body was found in his room. In our opinion, this circumstance could not have been read against the appellant. It is for the prosecution to prove the guilt against the appellant beyond reasonable doubt and if the appellant did not give any explanation it does not mean that dead body was buried by him. It is highly unlikely that a sane person would bury dead body in his residential room of a house jointly occupied by his other family members. As already noticed the house from where dead body got recovered belonged to Kantula, where he and his other family members were residing and the appellant and his wife were away from the village on the day when dead body was recovered from unlocked room allegedly occupied by the appellant.

11. In view of incongruities noticed by us, we are of the opinion

that the evidence collected by the prosecution is not qualitatively such that on every reasonable hypothesis the conclusion is that the appellant is guilty. We find that the chain of circumstantial evidence against the appellant is not complete and is capable of any other hypothesis than the guilt of the appellants. We do not find a combination of facts creating a network through which there is no escape for the appellants. Learned trial Judge in our opinion has committed error in convicting and sentencing the appellant. The charges under sections 302 and 201 IPC are not established against the appellant beyond the reasonable doubt.

12. In Ashish Batham Vs. State of M.P. (2002)7 SCC 317, their Lordships of Supreme Court indicated that mere suspicion, however strong it may be, cannot take the place of legal proof. It was observed as under:-

> "Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the henious nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Court dealing with criminal case at least should constantly remember that there is a long mental distance between "may be true" and "must be true" and this basic and golden rule only helps to maintain the vital distinction between "conjectures" and "sure conclusion" to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."

13. For these reasons, we allow the appeal and set aside the impugned judgment dated November 12, 2002 of learned Additional Sessions Judge (Fast Track) Kaman District Bharatpur. We acquit appellant Rashid of the charges under sections 302 and 201 IPC. Appellant Rashid, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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